

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

ERIC C. MARTIN,

Plaintiff,

v.

**ANSWER with
CROSSCLAIM
INDEX NO. 808523/2021**

TOWN OF TONAWANDA POLICE DEPARTMENT
o/b/o TOWN OF TONAWANDA, SPEEDWAY, LLC,
MARATHON PETROLEUM CORPORATION and
JOHN DOE #1, 2, 3, 4, 5, 6, 7, 8 as employees of
TOWN OF TONAWANDA POLICE DEPARTMENT,

Defendants.

Defendant, Speedway LLC, by Sugarman Law Firm, LLP, answering the Complaint of the plaintiff, alleges:

1. DENIES knowledge and information sufficient to form a belief as to the allegations contained in paragraphs “1”, “2”, “6”, “7”, “8”, “9”, “10”, “12”, “13”, “14”, “16”, “17”, “18”, “19”, “20”, “21”, “23”, “26”, “27”, “28”, “29”, “30”, “34”, “36”, “41”, “42”, “43”, “44”, “47”, “48”, “54”, “55”, “56”, “57”, “58”, “59”, “60”, “61”, “62”, and “71”.

2. DENIES the allegations contained in paragraphs “3”, “4”, “11”, “15”, “22”, “24”, “31”, “32”, “35”, “37”, “38”, “39”, “45”, “50”, “51”, “52”, “64”, “65”, “66”, “67”, “68”, “69”, “72”, “73”, “74”, “75”, “76”, “78”, and “79”.

3. ADMITS the allegations as to Speedway LLC only and DENIES the remainder of the allegations contained in paragraph “5”.

4. ADMITS upon information and belief the allegations contained in paragraph “49”.

5. With respect to paragraphs “25”, “33”, “40”, “46”, “53”, “63”, “70”, and “77”, the answering defendant repeats, reiterates, and realleges each and every admission and denial heretofore made with the same force and effect as if more fully set forth herein.

6. DENIES each and every other allegation not hereinbefore specifically admitted, controverted, or denied.

**AS AND FOR A FIRST AFFIRMATIVE
DEFENSE, THE DEFENDANT ALLEGES:**

7. That whatever injuries and damages plaintiff sustained were caused or were contributed to by the culpable conduct of plaintiff and plaintiff’s damages, if any, shall be diminished in the proportion of the culpable conduct attributable to plaintiff.

**AS AND FOR A SECOND AFFIRMATIVE
DEFENSE, THE DEFENDANT ALLEGES:**

8. That plaintiff assumed risks which caused or contributed to plaintiff’s injuries and damages.

**AS AND FOR A THIRD AFFIRMATIVE
DEFENSE, THE DEFENDANT ALLEGES:**

9. That the accident and injuries complained of in plaintiff’s Complaint were caused or brought about by the negligence of a third person or persons over whom the answering defendant herein had no control and for whose acts the answering defendant is in no way responsible.

**AS AND FOR A FOURTH AFFIRMATIVE
DEFENSE, THE DEFENDANT ALLEGES:**

10. In the event the plaintiff has judgment against the answering defendant, the answering defendant is entitled to set-off or reduction of any damage award, liability for which is expressly denied, for amounts received from any collateral sources as defined by CPLR § 4545,

including but not limited to, insurance, Social Security, Workers' Compensation, or employee benefit programs.

**AS AND FOR A FIFTH AFFIRMATIVE
DEFENSE, THE DEFENDANT ALLEGES:**

11. Plaintiff has failed to take all reasonable and necessary steps to mitigate his damages.

**AS AND FOR A SIXTH AFFIRMATIVE
DEFENSE, THE DEFENDANT ALLEGES**

12. That the answering defendant and its employees at all times acted reasonably, in good faith, and without malice.

**AS AND FOR A SEVENTH AFFIRMATIVE
DEFENSE, THE DEFENDANT ALLEGES:**

13. That the Complaint fails to state a cause of action upon which relief may be properly granted.

**AS AND FOR AN EIGHTH AFFIRMATIVE
DEFENSE, THE DEFENDANT ALLEGES:**

14. That answering defendant's liability is limited according to Article 16 of the CPLR.

**AS AND FOR A NINTH AFFIRMATIVE
DEFENSE, THE DEFENDANT ALLEGES:**

15. That the Court has no jurisdiction of the person of the answering defendant.

**AS AND FOR A TENTH AFFIRMATIVE
DEFENSE, THE DEFENDANT ALLEGES:**

16. That the causes of action in the Complaint are barred by the applicable statute of limitations.

**AS AND FOR AN ELEVENTH AFFIRMATIVE
DEFENSE, THE DEFENDANT ALLEGES:**

17. That the plaintiff's recovery must be reduced according to § 15-108 of the General Obligations Law, if applicable.

**AS AND FOR A TWELFTH AFFIRMATIVE
DEFENSE, THE DEFENDANT ALLEGES:**

18. That the Court has no subject matter jurisdiction of the matters set forth in the Complaint.

**AS AND FOR A CROSSCLAIM AGAINST CO-DEFENDANTS,
TOWN OF TONAWANDA POLICE DEPARTMENT
o/b/o TOWN OF TONAWANDA and
JOHN DOE #1, 2, 3, 4, 5, 6, 7, 8 as employees of
TOWN OF TONAWANDA POLICE DEPARTMENT,
THE ANSWERING DEFENDANT ALLEGES:**

19. That if the plaintiff sustained any damages as alleged in the Complaint through any acts or omissions other than the plaintiff's own, such damages were caused by the acts or omissions of the co-defendants, Town of Tonawanda Police Department o/b/o Town of Tonawanda and John Doe #1, 2, 3, 4, 5, 6, 7, 8 as Employees of Town Of Tonawanda Police Department, then the answering defendant demands judgment over and against the said co-defendants, Town of Tonawanda Police Department o/b/o Town of Tonawanda and John Doe #1, 2, 3, 4, 5, 6, 7, 8 as Employees of Town of Tonawanda Police Department, for contribution or indemnity for any part or all of such judgment as may be found to be due and owing by the answering defendant.

WHEREFORE, defendant, Speedway LLC, demands judgment dismissing the Complaint, or alternatively, that any recovery be reduced according to the plaintiff's degree of culpability and in accordance with CPLR § 4545, and judgment on the cross-claim against the co-defendants, Town of Tonawanda Police Department o/b/o Town of Tonawanda and John Doe #1, 2, 3, 4, 5, 6,

7, 8 as Employees of Town of Tonawanda Police Department, to indemnify, defend, and/or pay the disbursements of this action, and for such other and further relief as the Court deems just and proper.

DATED: July 21, 2021

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